Summary of SC98704, *Treasurer of the State of Missouri as Custodian of the Second Injury Fund v. Jonathan Parker*

Proceedings originating in the Labor and Industrial Relations Commission
Argued and submitted January 20, 2021; opinion issued April 20, 2021

Attorneys: The fund was represented by Eric W. Lowe of the attorney general's office in Kansas City, (573) 751-3321. Parker was represented by Steffanie Stracke of Edelman & Thompson LLC in Kansas City, (816) 561-3400. The Missouri Association of Trial Attorneys, which filed a brief as a friend of the Court, was represented by Todd C. Werts of Lear Werts LLP in Columbia, (573) 875-1991.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The second injury fund appeals from a decision from the labor and industrial relations commission awarding permanent total disability benefits to a man who sustained work related injuries while working for a tree trimming company. In a 6-0 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri vacates the commission's decision and remands (sends back) the case. Because the man sustained his work injuries after January 1, 2014, the commission applied the incorrect statutory provision in determining the award of fund benefits. Because the state constitution permits this Court only to review the commission's findings, not make such findings in the first instance, the case is remanded.

Facts: From 2004 to 2015, Jonathan Parker worked for Asplundh, a tree-trimming company. On March 8, 2014, he sustained a work-related injury to his right elbow. Then, on June 12, 2014, he sustained a work-related injury to his neck. Parker filed a workers' compensation claim regarding his injuries. He subsequently underwent surgery on both his elbow and neck and never returned to regular duty work afterward. Parker settled his claim against Asplundh; his claim against the second injury fund proceeded to a hearing regarding the June 2014 work injury. At the hearing, Parker introduced into evidence Dr. James Stuckmeyer's complete medical report as well as the notice he sent the fund of his intent to introduce Dr. Stuckmeyer's report. Attached to the notice was a report from another doctor. The administrative law judge (ALJ) found the fund liable for permanent total disability benefits pursuant to section 287.220.2, RSMo. The labor and industrial relations commission affirmed the ALJ's award. The fund appeals.

VACATED AND REMANDED.

Court en banc holds: (1) Because Parker sustained his work injuries after January 1, 2014, section 287.220.3, RSMo, not section 287.220.2, controlled the award of benefits. Because the Missouri Constitution only permits this Court to review the commission's decisions and findings, not make such findings in the first instance, the case is remanded to the commission for determination as to whether Parker is entitled to benefits under section 287.220.3.

(2) Section 287.220.3(2)(a) requires only that an employee has a medically documented preexisting disability equaling a minimum of 50 weeks of permanent partial disability. It does

not require the employee to establish he or she was determined to have reached the maximum medical improvement before suffering his or her primary injury. Interpreting section 287.220.3(2)(a) to require such prior diagnosis or knowledge would add words to the statute, which this Court is prohibited from doing when engaging in statutory interpretation.

(3) Section 287.220.3(2)(b) is not limited to one preexisting disability. Section 1.030, RSMo, instructs that the singular form of a word should be interpreted to include the plural form. Therefore, section 287.220.3(2)(b) should be read to include "when combined with the preexisting disabilities."

(4) An employee satisfies the second condition in section 287.220.3(2)(b) by showing the primary injury results in permanent total disability when combined with all preexisting disabilities that qualify under one of the four enumerated eligibility criteria listed in section 287.220.3(2)(a). By specifying that the preexisting disability must qualify under one of the four eligibility criteria in the first condition, the legislature excluded disabilities that are not the primary injury and that do not qualify under the first condition from being considered when determining if the claimant meets the second condition.

(5) Parker's notice expressing his intent to submit Dr. Stuckmeyer's report as a complete medical report, and the medical reports attached to the notice, were not admissible under section 287.210.7, RSMo. While section 287.210.7 provides that the complete medical report is admissible without further evidence or foundation, it does not make a similar provision for the notice. Nevertheless, the medical reports were admissible as part of Dr. Stuckmeyer's report, and the fund did not object to admission of the report, which included findings from the other medical reports. Accordingly, the commission can consider such evidence on remand.